

**UNITED STATES DISTRICT COURT  
FOR THE  
DISTRICT OF VERMONT**

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THE CITY OF RUTLAND, VERMONT,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY; GINA McCARTHY,  
ADMINISTRATOR; UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 1; and CURT SPALDING,  
REGIONAL ADMINISTRATOR,

Defendants.

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Civil No. 15-cv-35

Hon. William K. Sessions III

**THIRD STIPULATED MOTION TO STAY**

WHEREAS, Plaintiff filed a Complaint for Declaratory and Injunctive Relief in this case challenging Defendants' approval of Vermont's Total Maximum Daily Load to Address Biological Impairment in Moon Brook (VT03-06);

WHEREAS, Plaintiff served the Complaint on the United States Attorney on March 2, 2015, by certified mail;

WHEREAS, Plaintiff has also judicially appealed the Vermont Agency of Natural Resources' ("ANR") designation that Plaintiff is subject to the requirements of National Pollution Discharge Elimination System General Permit 3-9014 for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (the "Vermont Appeal");

WHEREAS, Plaintiff and ANR entered into a stipulation and settlement agreement in the Vermont Appeal which provided, among other things, for the retention of an independent third-

party expert to examine the data and evidence regarding certain disputed issues raised in the Vermont Appeal;

WHEREAS, following the issuance of a report summarizing the determinations of that third party expert earlier this year, Plaintiff and ANR have reviewed and discussed those determinations;

WHEREAS, following review of those determinations, Plaintiffs and ANR have also engaged in a series of discussions seeking to resolve the Vermont Appeal without the need for further litigation;

WHEREAS, Plaintiff and ANR continue to explore a potential resolution of the Vermont Appeal, and draft settlement proposals have been circulated;

WHEREAS, the Defendants, although they are not directly involved in the Vermont Appeal, have reviewed and commented on proposed agreements circulated between ANR and Plaintiff and otherwise have been involved in the negotiations between those parties to the extent that the resolution of the Vermont Appeal may implicate the Defendants' interests or affect the resolution of this case;

WHEREAS, a resolution of the Vermont Appeal may narrow, limit, or moot the issues raised in this case, and may ultimately result in the dismissal of this case;

WHEREAS, and Plaintiff and ANR have reached an agreement to attempt to resolve the Vermont Appeal on or before January 15, 2016;

WHEREAS, although the Plaintiff and ANR cannot disclose the details of the settlement negotiations, they agree that due to the complexity of the issues involved, additional time will be necessary to determine the form of any potential agreed resolution of the Vermont Appeal and this case; and

WHEREAS, this Court granted the parties' request to extend the original deadline for Defendants to respond to Plaintiffs' Complaint from May 4, 2015, to August 24, 2015, and granted the parties' second request to extend this deadline until October 27, 2015.

NOW, THEREFORE, in the interests of efficiency, preserving judicial resources, and reducing the costs of litigation, the United States of America, by its attorney, Benjamin R. Carlisle, on behalf of the Defendants, and the Plaintiff, by its attorney, Heather Z. Cooper, Esq., hereby jointly move the Court for an order staying this case through February 29, 2016. The parties further propose that the Court hold a telephonic status conference during the week of February 22, at a time convenient to the Court, to discuss the status of this case, including, if necessary, Defendants' deadline to respond to Plaintiff's Complaint and a briefing schedule for this matter, which challenges the EPA's decision-making under the Clean Water Act and the Administrative Procedure Act. Before the requested status conference to be set by the Court, the parties will confer in an attempt to agree upon a deadline for Defendants' response to the Complaint and a briefing schedule.

DATED at Rutland, Vermont this 21st day of October 2015.

THE CITY OF RUTLAND, VERMONT

By: /s/ Heather Z. Cooper  
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CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that the foregoing Third Stipulated Motion to Stay was filed this 21st day of October 2015, through the ECF filing system and will be sent electronically to the registered participants as identified in the Notice of Electronic Filing.

/s/ Benjamin R. Carlisle  
BENJAMIN R. CARLISLE